

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JACK LOUMENA,

Plaintiff,

v.

PAMELA KENNEDY, et al.,

Defendants.

Case No. 15-CV-00951-LHK

**ORDER GRANTING MOTIONS TO
DISMISS, GRANTING TITLE CO.’S
MOTION FOR SANCTIONS, DENYING
PLAINTIFF’S MOTION FOR
SANCTIONS, AND DECLARING
PLAINTIFF A VEXATIOUS LITIGANT**

Re: Dkt. Nos. 21, 29, 30, 33

Before the Court is: (1) a Motion to Dismiss filed by Defendants Walter P. Hammon (“Hammon”) and Travis I. Krepelka (“Krepelka”), ECF No. 21; (2) a Motion to Dismiss and to Declare Plaintiff Jack Loumena (“Plaintiff”) a Vexatious Litigant filed by Defendants Chicago Title Co. and Jeanie O’Connor (collectively, “Title Co.”) (with Hammon and Krepelka, “Defendants”), ECF No. 30; (3) Title Co.’s Motion for Sanctions against Plaintiff, ECF No. 29; (4) Plaintiff’s Motion for Sanctions against Title Co., ECF No. 33; and (5) requests for judicial notice filed by all parties, ECF Nos. 23, 26, 30-2, 34.

Having considered the submissions of the parties, the relevant law, and the record in this case, the Court hereby GRANTS Defendants’ Motions to Dismiss, GRANTS Title Co.’s Motion

for Sanctions, DENIES Plaintiff's Motion for Sanctions, and DECLARES Plaintiff a vexatious litigant.

I. BACKGROUND

A. Factual Background

This case arises out of the state court divorce proceedings between Plaintiff's mother, Wylmina E. Hettinga ("Hettinga"), and father, Timothy Loumena ("Loumena"). The state divorce case has been ongoing since 2005. ECF No. 23 (Hammon's and Krepelka's Request for Judicial Notice, "HK RJN") Ex. E ("Aug. 25, 2014 Order"); ECF No. 30 (Title Co.'s Request for Judicial Notice, "Title RJN") Ex. H (same).

The instant complaint alleges facts and a cause of action nearly identical to a previous case brought by Plaintiff against the same defendants. *See* HK RJN Ex. I (Complaint in *Loumena v. Kennedy, et al. ("Kennedy I")*, No. 14-CV-04165-LHK, or "*Kennedy I* Compl."); Title RJN Ex. M (same). As in *Kennedy I*, Plaintiff's complaint here alleges one cause of action: a violation of Plaintiff's civil rights under 42 U.S.C. § 1983. ECF No. 1 ("Compl."); *see also Kennedy I* Compl. Also as in *Kennedy I*, Plaintiff's complaint alleges that Defendants acted under the color of law to deprive Plaintiff of his property in violation of his Fourth, Fifth, and Fourteenth Amendment rights.¹ Compl. ¶¶ 32-36; *see also Kennedy I* Compl. ¶¶ 25-30. The instant complaint additionally alleges that Defendants deprived Plaintiff of his property in violation of federal tax laws. Compl. ¶ 36 (citing 26 U.S. §§ 7205(1),(5)(A)).

¹ The complaint fails to claim a violation of Plaintiff's Fourteenth Amendment rights, although Plaintiff cites the Fourteenth Amendment in Plaintiff's briefs. *See* Compl. ¶¶ 32-34; ECF No. 25 ("Opp."). However, Plaintiff clearly intends to state a claim against a state official. *See McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 764 & n.12 (2010) (noting that the Fourteenth Amendment applies the Fifth Amendment's just compensation clause and the Fourth Amendment's prohibition against unreasonable searches and seizures to the states). The Court will construe the complaint as claiming a violation of Plaintiff's Fourth and Fifth Amendment rights, as applied to state actors by the Fourteenth Amendment. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) ("A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." (internal citations omitted)).

The factual allegations in the instant complaint mirror the allegations in *Kennedy I*. Plaintiff's complaint arises out of the state-court-ordered sale of the Hettinga-Loumena family home ("the Property"). Compl. ¶ 11; HK RJN Ex. A ("The family residence located at 21251 Almaden Road, San Jose, CA is treated as community property."); Title RJN Ex. A (same). Plaintiff, who is *pro se*, alleges that Defendants acted under the color of law and in an "agency relationship" to transfer the Property to Loumena, who then sold the Property to third parties. Compl. ¶¶ 14, 21, 25; *see also Kennedy I* Compl. ¶¶ 17-18, 21. According to the complaint, the Property was sold to third party bidders even though Pacific Almaden Investments, LLC ("PAI") was the highest bidder. *Id.* ¶ 26.

PAI "is a limited liability corporation which was originally owned, at least on paper, by . . . Timothy Tibbott. Mr. Tibbott was the former live in boyfriend of [Hettinga]." Aug. 25, 2014 Order at 5. PAI also appears to involve Hettinga's brother, Joel Hettinga. *Id.* at 4. From 2010 to 2012, Hettinga attempted to transfer her interest in the Property to PAI by executing quitclaim deeds signed only by herself or her brother and not by Loumena. *Id.* at 4. The state court found that "the transfers executed by [Hettinga] in her attempts to transfer title to the former family residence violated the Automatic Temporary Restraining Orders" under Family Code § 2040. *Id.* at 6. The transfers were also in violation of Hettinga's fiduciary duty to Loumena. *Id.* at 7. Accordingly, the state court found "that the series of deeds . . . were void and of no force and effect." *Id.* at 12.

Documents from the state court divorce case—the same documents before this Court in *Kennedy I*—reveal that the state court repeatedly ordered the Property to be sold, with the proceeds to be placed in a trust account. In an order filed January 23, 2013, the state court wrote:

This Court previously ordered this property sold on 1 September 2011 (order filed 28 March 2012). Under that Order, Respondent Timothy Loumena was to select the realtor, both parties were to sign any and all necessary paperwork, and the net proceeds were to be placed into an interest-bearing trust account. The Court reiterates and modifies that Order as follows:

(a) The property shall be listed and sold forthwith. The listing agent shall be the individual named on the record by Mr. Loumena—Scott Raley of Customer Service Realty. Mr. Loumena shall be the sole lister of the property.

(b) Mr. Loumena shall work with the realtor to prepare the property for sale and make decisions concerning the appropriate list price, what to do with offers received, and any other necessary elements of the sales process. . . . As to any documents requiring any signatures from Ms. Hettinga, . . . Mr. Loumena shall provide them, and those parties shall promptly sign and return the documents to Mr. Loumena. If three (3) days after presenting the documents, Mr. Loumena has not received the necessary signatures, he may bring the documents to Department 83 for the Court Clerk to sign as elisor on behalf of Ms. Hettinga,

(c) All net sales proceeds shall be immediately placed in a blocked, interest-bearing trust account, and shall not be released in any fashion absent further Court Order.

(d) The Court expressly reserves jurisdiction over all parties' respective interests, if any, in the proceeds, which shall be determined after the sale and deposit of proceeds into a trust account.

Title RJN Ex. C at 2 (“Jan. 23, 2013 Order”); *see also* HK RJN Ex. B (“Mar. 28, 2012 Order”) (“The house at 21251 Almaden Road, San Jose, CA shall be sold with Respondent charged with selecting the Real Estate Agent to facilitate the sale. . . . Net proceeds shall be placed into an interest bearing trust account. A court order will be required to disburse the funds from the account.”).

Pursuant to the January 23, 2013 state court order, Loumena was required to have the Superior Court Clerk, Defendant Pamela Kennedy (“Kennedy”), sign as elisor on behalf of Hettinga and PAI. *See* Compl. Ex. M (recorded Grant Deed showing transfer from PAI to Loumena, signed by Kennedy); HK RJN Ex. F (recorded Grant Deed showing transfer from Hettinga to Loumena, signed by Kennedy). The Property was then sold by Loumena to a third party. Compl. ¶ 25. The state court later found that “the sale to the third party buyers was proper, final, and in full compliance with all prior orders to sell the subject property.” Aug. 25, 2014 Order at 3. The state court also divided the proceeds of the sale between Loumena and Hettinga. *Id.* at 3, 5.

These same allegations and state court orders were before this Court in *Kennedy I*. See generally HK RJN Ex. J (Order Granting Motion to Dismiss in *Kennedy I*, or “*Kennedy I* Dismissal”); Title RJN Ex. N (same). The only new allegations in the instant complaint relate to Plaintiff’s claims to ownership of the Property. Plaintiff now alleges that Hettinga gifted the Property to Plaintiff in 2006. Compl. ¶ 14. Plaintiff also alleges that, at some later point, Hettinga transferred the Property to PAI, and, at some point, PAI’s ownership transferred to Plaintiff. *Id.* ¶ 12 (alleging that Plaintiff is “the sole member of PAI”). Additionally, Plaintiff now alleges that PAI purchased the Property in a foreclosure sale. *Id.* ¶¶ 16, 19. In the August 25, 2014 Order, the state court found that “[t]he foreclosure sale did not occur PAI never acquired title by purchasing the property in a foreclosure sale.” Aug. 25, 2014 Order at 12. The state court further noted, “There are no deeds transferring title by virtue of a foreclosure,” leaving PAI without any interest in the Property. *Id.* at 13.

B. Prior Litigation Involving the Hettinga-Loumena Divorce

1. Overview of Hettinga-Loumena Divorce Litigation

This is now the twelfth case in the U.S. District Court for the Northern District of California filed by Plaintiff, Plaintiff’s company PAI, Hettinga, or Plaintiff’s brother regarding the divorce proceedings of Hettinga and Loumena. See *Loumena v. Hammon, et al.* (“*Hammon II*”), No. 15-CV-03613-NC; *M.L. v. Nichols, et al.* (“*Nichols II*”), 15-CV-02303-BLF; *Hettinga v. Paliwal*, No. 15-CV-02246-BLF; *Loumena v. Nichols, et al.* (“*Nichols I*”), No. 15-CV-01372-BLF; *M.L. v. Barth*, No. 14-CV-05423-LHK; *Kennedy I*, No. 14-CV-04165-LHK; *Pacific Almaden Invs., LLC v. Hettinga, et al.* (“*PAI*”), 14-CV-01631-RMW; *Hettinga v. Loumena* (“*Loumena II*”), No. 13-CV-02217-RMW; *Hettinga, et al. v. Loumena, et al.* (“*Loumena I*”), No. 10-CV-02975-JSW; *Hettinga v. Orlando, et al.*, No. 09-CV-00253-JW; *Hettinga v. Hammon, et al.* (“*Hammon I*”), No. 09-CV-06040-JW.

Six different judges of the Northern District have heard these twelve cases. Seven of these cases have been the subject of a motion to dismiss, and all seven were dismissed for lack of

subject matter jurisdiction under the *Rooker-Feldman* doctrine, including *Kennedy I*. See *Nichols I*, No. 15-CV-01372-BLF (dismissing case under the *Rooker-Feldman* doctrine and collecting previous cases). Two of the dismissed cases have been summarily affirmed by the U.S. Court of Appeals for the Ninth Circuit. See *PAI*, 14-CV-01631-RMW; *Orlando*, No. 09-CV-00253-JW.

The California Superior Court and the California Court of Appeal have each declared Hettinga a vexatious litigant. Aug. 25, 2014 Order at 8. The U.S. District Court for the Northern District of California has also declared Hettinga a vexatious litigant. *Loumena II*, No. 13-CV-02217-RMW, 2014 WL 4955187, at *4-5 (N.D. Cal. Sept. 30, 2014). As a result, Hettinga is subject to a pre-filing review of all her future filings in the U.S. District Court for the Northern District of California. *Id.* Specifically, “[t]he Clerk of this court may not file or accept any further complaints filed by or on behalf of Wylmina Hettinga as a named plaintiff that arise out of facts related to plaintiff’s divorce case.” *Id.* at *5.

2. Plaintiff’s First Case: *Kennedy I*

Including the instant case, Plaintiff has filed four of the twelve cases in this district involving the Hettinga-Loumena divorce proceedings. Plaintiff filed his first suit, *Kennedy I*, on September 16, 2014. *Kennedy I* Dismissal at 4. As discussed above, *Kennedy I* and this case present virtually identical allegations against the same defendants. See generally Compl.; *Kennedy I* Compl. The instant case adds only some new allegations about Plaintiff’s and PAI’s ownership of the Property. See generally Compl.; *Kennedy I* Compl. In *Kennedy I*, as in the instant case, Plaintiff argued that the sale of the Property to a third party, the execution of the grant deed by Kennedy, and the distribution of the proceeds from the sale violate Plaintiff’s Fourth, Fifth, and Fourteenth Amendment rights. *Kennedy I* Dismissal at 8. On February 27, 2015, this Court dismissed *Kennedy I* for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Id.* at 9.

Kennedy I, and the instant case, overlap substantially with two earlier suits by Hettinga. First, on May 15, 2013, Hettinga sued Loumena and Kennedy and alleged that she or PAI owned

the Property and Kennedy granted the Property to Loumena in violation of Hettinga's Fourth, Fifth, and Fourteenth Amendment rights. *Loumena II*, No. 13-CV-02217-RMW. On September 30, 2014, Hettinga's suit was dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine and Hettinga was declared a vexatious litigant. *Id.* Hettinga's suit is on appeal with the Ninth Circuit. ECF No. 27 (Plaintiff's Request for Judicial Notice, or "PRJN 1") (Order of the Ninth Circuit in Case No. 14-17135 denying summary affirmance); ECF No. 34 (Plaintiff's Request for Judicial Notice, or "PRJN 2") Ex. B (same).

Second, on April 9, 2014, PAI sued Hettinga, Loumena, Kennedy, Scott Raley ("Raley"), and O'Connor. HK RJN Ex. H (Order Granting Motion to Dismiss in *PAI*, No. 14-CV-01631-RMW, or "*PAI* Dismissal"); Title RJN Ex. L (same). Hettinga filed a cross complaint, naming PAI, Loumena, Kennedy, Raley, O'Connor, and Chicago Title Co as defendants. *Id.* The Court noted, "The complaint and cross-complaint allege similar facts and claims, all of which are nearly identical to the claim brought by Hettinga in an earlier case in this district against the same defendants," referring to *Loumena II*. *Id.* at 2. PAI and Hettinga alleged that the sale of the Property to a third party, the execution of the grant deed by Kennedy, and the distribution of the proceeds from the Property's sale were in violation of Hettinga's and PAI's Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 2-3. On October 1, 2014, the Court dismissed the complaint and cross-complaint for lack of subject matter jurisdiction under the *Rooker-Feldman*. *Id.* at 5. Hettinga appealed to the Ninth Circuit, which denied Hettinga in forma pauperis status because "the appeal is frivolous." *PAI*, 14-CV-01631-RMW. The Ninth Circuit summarily affirmed the district court on April 16, 2015, noting that "the questions raised in this appeal are so insubstantial as to not require further argument." *Id.*

3. Plaintiff's Second Case: *Nichols I*

On March 25, 2015, Plaintiff filed his second suit arising out of the Hettinga-Loumena divorce proceedings, this time against Hammon and a retired Santa Clara County Superior Court Judge. *Nichols I*, No. 15-CV-01372-BLF. Plaintiff challenged the Superior Court Judge's

January 6, 2015 refusal to hear any more requests for declaratory relief from a state court order that required Plaintiff to be in the care of Loumena and have limited contact with Hettinga. *Id.* On August 3, 2015, the Court dismissed the complaint for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Id.*

Plaintiff's younger brother filed a virtually identical suit on May 21, 2015 against Hammon and the same Superior Court Judge. *Nichols II*, 15-CV-02303-BLF. Plaintiff's younger brother challenged the Superior Court Judge's January 6, 2015 refusal to hear more requests for declaratory relief from an order that barred Plaintiff's younger brother from Hettinga's custody. *Id.* This suit remains pending.

Nichols I and *Nichols II* follow a December 28, 2009 suit by Hettinga on behalf of herself, Plaintiff, Plaintiff's younger brother, and Hettinga's other minor children, in which Hettinga challenged the state court's limitation of her visitation rights. *Hammon I*, No. 09-CV-06040-JW. On April 1, 2010, Hettinga's case was dismissed for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Id.*

4. Plaintiff's Third Case: *Hammon II*

Plaintiff filed his third case arising out of the Hettinga-Loumena divorce proceedings on August 6, 2015. *Hammon II*, No. 15-CV-03613-NC. Plaintiff sued Hammon and Krepelka for distributing Plaintiff's money from the proceeds of the sale of the Property, held in an interest-bearing trust account, to themselves and their clients and colleagues. *Id.*; ECF No. 45 (Plaintiff's Motion to Relate). Plaintiff's third case remains pending.

C. Procedural Background

On February 27, 2015, this Court dismissed *Kennedy I* for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. *Kennedy I* Dismissal at 9. Three days later, on March 2, 2015, Plaintiff filed the instant complaint. ECF No. 1. The complaint names the same six defendants from *Kennedy I*: Kennedy, Clerk of the Santa Clara County Superior Court; Hammon, an attorney appointed by the state court to represent Hettinga and Loumena's four

1 minor children; Krepelka, Loumena's attorney; Raley, the court-appointed real estate listing agent;
2 Chicago Title Co., which was involved in the sale of the Property; and Jeanie O'Connor, who has
3 some relationship with Chicago Title Co.²

4 Defendants Hammon and Krepelka filed a Motion to Dismiss and Request for Judicial
5 Notice on May 22, 2015. ECF Nos. 21, 23. Plaintiff opposed the Motion to Dismiss and filed a
6 Request for Judicial Notice on June 4, 2015. Opp.; PRJN 1. Defendants Hammon and Krepelka
7 replied on June 11, 2015. ECF No. 31.

8 Title Co. filed a Motion for Sanctions on June 10, 2015. ECF No. 29. That same day,
9 Title Co. moved to dismiss the complaint and to declare Plaintiff a vexatious litigant. ECF No. 30.
10 Additionally, Title Co. filed a Request for Judicial Notice. ECF No. 30-2. On June 18, 2015,
11 Plaintiff opposed all of Title Co.'s motions. ECF No. 33 ("Opp.2"). Plaintiff also filed a second
12 Request for Judicial Notice. PRJN 2. Title Co. did not reply.

13 **II. LEGAL STANDARDS**

14 **A. Rule 12(b)(1) Subject Matter Jurisdiction**

15 A defendant may move to dismiss an action for lack of subject matter jurisdiction pursuant
16 to Rule 12(b)(1) of the Federal Rules of Civil Procedure. "The party asserting federal subject
17 matter jurisdiction bears the burden of proving its existence." *Chandler v. State Farm Mut. Auto*
18 *Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). The party carries that burden by putting forth "the
19 manner and degree of evidence required" by whatever stage of the litigation the case has reached.
20 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

21 **B. Rule 12(b)(6) Motion to Dismiss**

22 Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a complaint to include "a
23 short and plain statement of the claim showing that the pleader is entitled to relief." A complaint
24 that fails to meet this standard may be dismissed pursuant to Rule 12(b)(6). Rule 8(a) requires a
25

26 ² Summons were issued for each defendant on April 13, 2015. ECF Nos. 4-9. No proofs of
27 service have been filed. Defendants Raley and Kennedy have not yet appeared in the case.

1 plaintiff to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
 2 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff
 3 pleads factual content that allows the court to draw the reasonable inference that the defendant is
 4 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The plausibility
 5 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a
 6 defendant has acted unlawfully.” *Id.*

7 For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s] factual allegations
 8 in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving
 9 party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The
 10 Court, however, need not accept as true allegations contradicted by judicially noticeable facts, *see*
 11 *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it “may look beyond the plaintiff’s
 12 complaint to matters of public record” without converting the Rule 12(b)(6) motion into a motion
 13 for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 1995). Nor must the
 14 Court “assume the truth of legal conclusions merely because they are cast in the form of factual
 15 allegations.” *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam). Mere
 16 “conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to
 17 dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

18 **C. Rule 11 Sanctions**

19 “Rule 11 requires the imposition of sanctions when a motion is frivolous, legally
 20 unreasonable, or without factual foundation, or is brought for an improper purpose.” *Conn v.*
 21 *Borjorquez*, 967 F.2d 1418, 1420 (9th Cir. 1992). “The central purpose of Rule 11 is to deter
 22 baseless filings” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d
 23 244, 254 (9th Cir. 1992) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990)).
 24 An “improper purpose” is a purpose to “harass or to cause unnecessary delay or needless increase
 25 in the cost of litigation.” Fed. R. Civ. P. 11(b)(1). The test for improper purpose is an objective
 26 one. *G.C. & K.B. Invs., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003).

Courts also use an objective standard to address the other conditions for Rule 11 sanctions by looking to whether a reasonable basis for the challenged position existed in law and fact at the time the position was adopted. *Conn*, 967 F.2d at 1421; *see also Bus. Guides, Inc. v. Chromatic Commc'ns Enters., Inc.*, 498 U.S. 533, 554 (1991) (establishing the “objective standard of reasonable inquiry” imposed by Rule 11). In determining whether an objectively reasonable basis exists, whether the pleader is correct in his perception of the law is not critical. *Conn*, 967 F.2d at 1421. Thus, if a court finds that a party made a reasonably arguable claim at the time of filing the complaint, the court should not apply Rule 11 sanctions.

III. DISCUSSION

A. Requests for Judicial Notice

The Court first addresses the parties’ requests for judicial notice. Although a district court generally may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion, the Court may take judicial notice of documents referenced in the complaint, as well as matters in the public record, without converting a motion to dismiss into one for summary judgment. *See Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125-26 (9th Cir. 2002). In addition, the Court may take judicial notice of matters that are either “generally known within the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Public records, including judgments and other court documents, are proper subjects of judicial notice. *See, e.g., United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007). Records filed with a county recorder are also judicially noticeable as undisputed public records. *See Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004).

1. Defendants’ Requests for Judicial Notice

First, in support of Hammon’s and Krepelka’s Motion to Dismiss, Hammon and Krepelka request judicial notice of various orders and filings by the parties, including complaints, in related

1 state and federal court proceedings. *See* HK RJN. Plaintiff does not oppose Hammon's and
 2 Krepelka's request. The Court GRANTS Hammon's and Krepelka's Request for Judicial Notice,
 3 as these are filings in related state and federal court proceedings. *See Black*, 482 F.3d at 1041.

4 Second, Title Co. requests judicial notice in support of Title Co.'s Motion to Dismiss and
 5 to Declare Plaintiff a Vexatious Litigant. Title Co.'s Request for Judicial Notice is largely
 6 duplicative of Hammon's and Krepelka's request. *See* Title RJN Exs. A-B, G, H-J, L-N (orders
 7 and party filings in related state and federal cases). However, Title Co. requests judicial notice of
 8 additional state court orders, *id.* Exs. C-E, and Hettinga's cross-complaint in *PAI*, No. 14-CV-
 9 01631-RMW, *id.* Ex. K. Finally, Title Co. requests judicial notice of the "Vexatious Litigant List"
 10 maintained by the California Judicial Council. *Id.* Ex. F.

11 In response to Title Co.'s request, Plaintiff opposes only judicial notice of Exhibit A, a
 12 Superior Court order filed on January 10, 2008 that found the Property was community property.
 13 The Court notes that it granted judicial notice of this document in response to Hammon's and
 14 Krepelka's Request for Judicial Notice, which Plaintiff did not oppose. Plaintiff argues that Title
 15 Co. should have notified this Court of a state Court of Appeal remand order altering part of the
 16 Superior Court's order in Exhibit A. Opp.2 at 4. However, Title Co.'s Exhibit H included a
 17 description of the remand order. Title RJN Ex. H. Moreover, Plaintiff relies on Title Co.'s
 18 Exhibit H as evidence of the remand order. Opp.2 at 4. Further, Plaintiff does not argue that
 19 Exhibit A is an inaccurate copy of the Superior Court's ruling as issued. Additionally, the remand
 20 order appears to have almost entirely affirmed the state court order in Exhibit A. *See* Compl. Ex.
 21 L (noting the remand order affirmed that the house was community property, except for a small
 22 portion that Hettinga had separately contributed); Aug. 25, 2014 Order at 1. The Court GRANTS
 23 Title Co.'s Request for Judicial Notice, as these are filings in related state and federal court
 24 proceedings or other public records. *See Black*, 482 F.3d at 1041; *Rupert v. Bond*, No. 12-CV-
 25 05292-LHK, 2013 WL 5289617, at *5 (N.D. Cal. Sept. 18, 2013) (granting request for judicial
 26 notice of the California Vexatious Litigant List).

2. Plaintiff's Requests for Judicial Notice

First, in opposition to Hammon's and Krepelka's Motion to Dismiss, Plaintiff requests judicial notice of an order filed in Ninth Circuit Case No. 14-17135, two exhibits submitted in the same Ninth Circuit case, and an excerpt from a Memorandum of Points and Authorities in an unnamed case. PRJN 1. Plaintiff also requests notice of an affidavit filed by Hettinga. *Id.*

Defendants Hammon and Krepelka oppose Plaintiff's Request for Judicial Notice. ECF No. 31.

The Court GRANTS judicial notice of the order filed by the Ninth Circuit in Case No. 14-17135, as it is a filing in a related court proceeding. *See Black*, 482 F.3d at 1041. However, the Court DENIES judicial notice of the two exhibits submitted in the Ninth Circuit case and the memorandum. For each of these three documents, Plaintiff submitted only a single page from an apparently longer document. Each page fails to identify the document of which it is part and the document's authorship. Moreover, Plaintiff fails to explain the relevance of these out-of-context pages. The Court finds these documents are not sources whose accuracy cannot reasonably be questioned and that they are not relevant to an issue presented. *See Fed. R. Evid. 201(b); Flick v. Liberty Mut. Fire Inc. Co.*, 205 F.3d 386, 392 n.7 (9th Cir. 2000). Further, the Court DENIES Plaintiff's request for judicial notice of Hettinga's affidavit. This document includes hearsay and statements about documents that are not attached. Moreover, Hettinga has an interest in the outcome of this action. As a result, the Court finds Hettinga's affidavit is not a source whose accuracy cannot be reasonably be questioned. *See Fed. R. Evid. 201(b).*

Second, Plaintiff filed a Request for Judicial Notice in opposition to Title Co.'s Motion to Dismiss and to Declare Plaintiff a Vexatious Litigant. Plaintiff again requests notice of the Ninth Circuit's order in Ninth Circuit Case No. 14-17135, *see* PRJN 2 Ex. B, which the Court GRANTS for the reason stated above. Plaintiff also requests notice of excerpts from a reply brief and a memorandum filed in other cases, a declaration by PAI lawyer Michael Stone ("Stone") filed in a state court case, a letter sent to PAI by Loumena, and a grant deed executed by Chicago Title Co. PRJN 2 Exs. A, C-F. Title Co. does not oppose Plaintiff's Request for Judicial Notice.

The Court GRANTS judicial notice of the grant deed, as it is a public record. *See Black*, 482 F.3d at 1041. The Court DENIES the remainder of Plaintiff's request, as the documents are not sources whose accuracy cannot reasonably be questioned. *See Fed. R. Evid.* 201(b). The brief and memoranda are out-of-context one-page excerpts from longer documents, without any identifying information. The Stone Declaration includes hearsay and statements about documents that are not attached. Further, PAI has an interest in the outcome of this action and thus is not a source whose accuracy cannot reasonably be questioned. Finally, the Loumena letter is not notarized or authenticated in any way.

B. Motions to Dismiss

All defendants move to dismiss on two grounds: (1) no defendant is a state actor; and (2) the Court lacks subject matter jurisdiction over the case pursuant to the *Rooker-Feldman* doctrine. Additionally, Title Co. asserts that Plaintiff lacks standing. Because the Court finds that it lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine, the Court need not address Defendants' other arguments.

Under the *Rooker-Feldman* doctrine, a federal district court has no authority to review the final determinations of a state court in judicial proceedings. *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). "The purpose of the doctrine is to protect state judgments from collateral federal attack. Because district courts lack power to hear direct appeals from state court decisions, they must decline jurisdiction whenever they are 'in essence called upon to review the state court decision.'" *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir. 2001) (quoting *Feldman*, 460 U.S. at 482 n.16). The *Rooker-Feldman* doctrine precludes not only review of decisions of the state's highest court, but also those of its lower courts. *See Dubinka v. Judges of Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994). A challenge under the *Rooker-Feldman* doctrine is a challenge for lack of subject matter jurisdiction. *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937 (9th Cir. 1998).

The *Rooker-Feldman* doctrine applies when a plaintiff in federal court alleges a “de facto appeal” by (1) asserting errors by the state court as an injury, and (2) seeking relief from the state court judgment as a remedy. *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139-40 (9th Cir. 2004). “A federal action constitutes such a de facto appeal where ‘claims raised in the federal court action are ‘inextricably intertwined’ with the state court’s decision such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules.’” *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir. 2008) (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003)).

In this case, Plaintiff brings a § 1983 claim based on the state court’s alleged violation of federal tax laws and Plaintiff’s Fourth, Fifth, and Fourteenth Amendment rights in ordering and executing the sale of the family property. Compl. ¶¶ 32-36. Plaintiff seeks relief in the form of monetary damages and an injunction barring Defendant Kennedy from being a Court Clerk of any court in the United States. *Id.* ¶¶ 37-38.

As in *Kennedy I*, Plaintiff appears to challenge (1) the state court’s order to sell the Property, (2) the execution of the sale of the Property to third-party buyers, and (3) the distribution of the proceeds from the sale. As before, the Court finds all three challenges barred by the *Rooker-Feldman* doctrine. Plaintiff also challenges the “seizure” of PAI’s interest in the Property. This challenge is also barred by the *Rooker-Feldman* doctrine.

First, to the extent that Plaintiff is challenging the sale of the Property, that would constitute a collateral attack on the state court’s order directing the property to be sold. The state court ordered, “The house at 21251 Almaden Road, San Jose, CA shall be sold with [Loumena] charged with selecting the Real Estate Agent to facilitate the sale.” Mar. 28, 2012 Order. The state court also ordered, “The property shall be listed and sold forthwith. The listing agent shall be the individual named on the record by Mr. Loumena—Scott Raley of Customer Service Realty.” Jan. 23, 2013 Order. In order to review the propriety of the sale of the Property, this Court would have to review the state court’s March 28, 2012 and January 23, 2013 Orders. However, “when a

1 losing plaintiff in state court brings a suit in federal district court asserting as legal wrongs the
 2 allegedly erroneous legal rulings of the state court and seeks to vacate or set aside the judgment of
 3 that court, the federal suit is a forbidden de facto appeal.” *Noel v. Hall*, 341 F.3d 1148, 1156 (9th
 4 Cir. 2003). This is exactly the case here, where Plaintiff, arguably “losing” in state court, asserts
 5 that the orders to sell the Property violated his Constitutional rights. Compl. ¶ 36. The case is “a
 6 forbidden de facto appeal.” *Noel*, 341 F.3d at 1156.

7 Second, Plaintiff challenges the execution of the sale on the grounds that the Property was
 8 sold to third party buyers instead of PAI and the sale documents were improperly signed by
 9 Kennedy. The state court expressly ruled that “the sale to the third party buyers was proper, final,
 10 and in full compliance with all prior orders to sell the subject property.” Aug. 25, 2014 Order at 3.
 11 Additionally, the state court noted that “the Court ordered that the Clerk of the Court would be
 12 authorized to sign documents required to complete the sale in the event that [Hettinga] refused to
 13 sign the required documents.” *Id.*; see also Jan. 23, 2013 Order (setting out procedure for the
 14 Court Clerk to sign sale documents). Given the state court’s express ruling approving the sale to
 15 third party buyers, this Court cannot review whether PAI was a higher bidder or whether the Court
 16 Clerk should have signed the documents. Such a review is forbidden by the *Rooker-Feldman*
 17 doctrine. “A federal action constitutes such a *de facto* appeal where claims raised in the federal
 18 court action are inextricably intertwined with the state court’s decision such that the adjudication
 19 of the federal claims would undercut the state ruling or require the district court to interpret the
 20 application of state laws or procedural rules.” *Reusser*, 525 F.3d at 859 (citation omitted).
 21 “Where the district court must hold that the state court was wrong in order to find in favor of the
 22 plaintiff, the issues presented to both courts are inextricably intertwined” and the action is properly
 23 dismissed under the *Rooker-Feldman* doctrine. *Doe & Assocs.*, 252 F.3d at 1030.

24 Third, to the extent that Plaintiff challenges the distribution of the proceeds from the sale,
 25 that is a challenge to the state court’s order requiring that the funds be placed in a trust and
 26 distributed at the court’s direction. “The *Rooker-Feldman* doctrine, generally speaking, bars a

plaintiff from bringing a § 1983 suit to remedy an injury inflicted by the state court's decision." *Jensen v. Foley*, 295 F.3d 745, 747 (7th Cir. 2002); *see also Rhodes v. Gordon*, No. CV 12-2863-JGB(DTB), 2013 WL 3780378, at *10 (C.D. Cal. July 16, 2013) ("A plaintiff may not avoid the *Rooker-Feldman* bar by styling his attack on the state court's ruling as a civil rights action." (citing *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995))). The state court divided the proceeds of the sale between Loumena and Hettinga, and directed that Loumena's attorney distribute the funds only in accordance with the state court's order. Aug. 25, 2014 Order at 3, 22. Thus, this Court cannot review the state court's distribution of funds. *See Reusser*, 525 F.3d at 859.

Finally, Plaintiff challenges the seizure of PAI's interest in the Property. Plaintiff claims that, at some point prior to the sale to third party buyers, PAI purchased the Property in a non-judicial foreclosure. Compl. ¶ 16. However, the state court ruled that, "The foreclosure sale did not occur . . . PAI never acquired title by purchasing the property in a foreclosure sale." Aug. 25, 2014 Order at 12. The state court further noted, "There are no deeds transferring title by virtue of a foreclosure." *Id.* at 13. This Court cannot review PAI's alleged ownership without reviewing the state court's August 25, 2014 Order. District courts "must decline jurisdiction whenever they are 'in essence called upon to review the state court decision.'" *Doe & Assocs.*, 252 F.3d at 1030. Thus, this Court cannot review PAI's ownership through the foreclosure sale.

Plaintiff argues that the *Rooker-Feldman* doctrine does not apply for three reasons. First, Plaintiff contends that he was not a party in the state court proceedings and that PAI was not notified of any state court proceedings. Opp. at 7; Opp.2 at 3. Plaintiff relies on *Lance v. Dennis*, 546 U.S. 459, 461 (2006) (per curiam), in which several citizens challenged a Colorado Supreme Court decision requiring Colorado to use a court-ordered congressional redistricting plan. The district court found that the *Rooker-Feldman* doctrine barred the citizens' federal challenge because the citizens were in privity with the Colorado General Assembly, who was the plaintiff before the Colorado Supreme Court. *Id.* at 462. The U.S. Supreme Court reversed, holding that the federal plaintiffs' claims were not barred because the federal plaintiffs had not been "in a

1 position to ask this Court to review the state court’s judgment.” *Id.* at 465.

2 *Lance* bears little relation to this case. Here, Plaintiff was represented in the state court
3 proceedings by a court-appointed attorney. *See, e.g.*, HK RJN Ex. C (listing Defendant Hammon
4 as Plaintiff’s attorney). Plaintiff does not argue—and there is no indication in the record—that his
5 attorney was unable to participate in the state court proceedings or to challenge the state court
6 orders. *See* Mar. 28, 2012 Order (noting Hammon was present at hearing); *see also Lance*, 546
7 U.S. at 465. Additionally, Plaintiff claims ownership of the Property through his ownership of
8 PAI, and seeks to restore *PAI’s* interest in the Property. PAI was joined to the state court divorce
9 action in August 2012. Aug. 25, 2014 Order at 6. Although Plaintiff asserts that PAI was not
10 notified, the state court found that “PAI was properly joined” in the state court proceeding and that
11 PAI failed to appear for a hearing “even though they were noticed for it.” *Id.* at 17-18. In fact,
12 PAI appealed the January 23, 2013 Order directing that the Property be sold and the proceeds
13 placed into a trust account. *See id.* at 22. To the extent that Plaintiff disputes PAI’s joinder in the
14 state court action, that is a challenge to the state court’s August 25, 2014 Order and is barred by
15 the *Rooker-Feldman* doctrine. *See Noel*, 341 F.3d at 1156.

16 Second, Plaintiff argues that the *Rooker-Feldman* doctrine applies only to federal cases
17 brought “after the state proceedings ended,” while Plaintiff originally filed a federal lawsuit on
18 September 16, 2014. *Opp.* at 7. Although Plaintiff’s argument is not clear, the Court believes
19 Plaintiff is pointing out that the *Rooker-Feldman* doctrine does not bar parallel state and federal
20 proceedings. *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005)
21 (noting that in *Rooker* and *Feldman*, “the losing party in state court filed suit in federal court after
22 the state proceedings ended”). However, Plaintiff points to no parallel state and federal
23 proceedings. The state court orders essentially challenged by Plaintiff here are final court orders
24 issued before Plaintiff filed this proceeding on March 2, 2015. ECF No. 1.

25 Third, Plaintiff contends that this Court has jurisdiction over any lawsuit between Plaintiff
26 and the IRS over a tax form that the IRS may issue for the sale of the Property. *Opp.* at 6.

Plaintiff fails to explain why an IRS action would affect the application of the *Rooker-Feldman* doctrine to this case. Moreover, Plaintiff does not allege the IRS has actually issued any tax forms or taken any action regarding the Property.

Accordingly, Plaintiff's § 1983 claim is a challenge to the final order of a state court. Such a claim is barred by the *Rooker-Feldman* doctrine, and the Court thus GRANTS Defendants' motions to dismiss without prejudice for lack of subject matter jurisdiction. *See Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (noting that dismissal for lack of subject matter jurisdiction should be without prejudice).

C. Motion for Sanctions

Title Co. asks for Rule 11 sanctions against Plaintiff in the amount of \$10,000. ECF No. 29. Title Co. contends that Plaintiff's complaint is meritless and duplicative of previous suits, and was filed to harass Title Co. ECF No. 29-1. In response, Plaintiff requests sanctions against Title Co.'s attorney in the amount of \$102,000, based on alleged inconsistency in Title Co.'s representations to the Court about PAI's ownership. Opp.2 at 2-3. The Court addresses the two motions in turn.

1. Title Co.'s Request for Sanctions

"The key question in assessing frivolousness is whether a complaint states an arguable claim" *Conn*, 967 F.2d at 1421; *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc) (noting a pleading is frivolous if it is "both baseless and made without a reasonable and competent inquiry"). For the reasons stated below, the Court concludes the instant complaint is frivolous.

This is essentially the fourth time a district court in the Northern District of California has heard this claim, and the fourth time that this claim is being dismissed for lack of subject matter jurisdiction. The sale of the Property was first addressed in *Loumena II*, filed on May 15, 2013. No. 13-CV-02217-RMW. Hettinga sued Loumena and Kennedy for transferring the Property to Loumena and accused Kennedy of improperly signing the grant deed. *Id.* U.S. District Judge

Ronald Whyte dismissed *Loumena II* for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine on September 30, 2014. *Id.* Appeal is pending before the Ninth Circuit.

Judge Whyte next addressed the disposition of the Property when PAI sued Hettinga, Loumena, Kennedy, Raley, and O'Connor on April 9, 2014. *See PAI Dismissal*. Hettinga filed a cross complaint, naming PAI, Loumena, Kennedy, Raley, O'Connor, and Chicago Title Co as defendants. *Id.* Judge Whyte noted, "The complaint and cross-complaint allege similar facts and claims, all of which are nearly identical to the claim brought by Hettinga in an earlier case in this district against the same defendants," referring to *Loumena II*. *Id.* at 2. PAI and Hettinga alleged that the sale of the Property to a third party, the execution of the grant deed by Kennedy, and the distribution of the proceeds from the sale violated Hettinga's and PAI's Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 2-3. Judge Whyte found that the complaint and cross-complaint were barred by the *Rooker-Feldman* doctrine and dismissed the case on October 1, 2014. *Id.* at 5. Hettinga appealed to the Ninth Circuit, which denied Hettinga in forma pauperis status because "the appeal is frivolous." *PAI*, 14-CV-01631-RMW. The Ninth Circuit summarily affirmed the district court on April 16, 2015, noting that "the questions raised in this appeal are so insubstantial as to not require further argument." *Id.*

On September 16, 2014, Plaintiff filed *Kennedy I*. *Kennedy I Dismissal* at 4. Plaintiff also claimed that the sale of the Property to a third party, the execution of the grant deed by Kennedy, and the distribution of the proceeds from the sale were in violation of Plaintiff's Fourth, Fifth, and Fourteenth Amendment rights. *Id.* at 8. On February 27, 2015, like Judge Whyte in *Loumena II* and *PAI*, this Court dismissed *Kennedy I* for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. *Id.* at 9.

Despite the rulings in *Loumena II*, *PAI*, and *Kennedy I*, Plaintiff filed the instant complaint just three days after the dismissal of *Kennedy I*. ECF No. 1. As explained above, this suit mirrors *Kennedy I*. There are very few new allegations in the instant complaint, none of which substantively alter Plaintiff's *Kennedy I* allegations about Defendants' conduct in selling the

Property. The instant case raises the same challenges to the sale of the Property, the execution of the grant deed, and the distribution of the proceeds that this Court considered in *Kennedy I*. Moreover, the new allegations Plaintiff did make about Plaintiff's and PAI's ownership of the Property were squarely contradicted by the state court. Plaintiff alleged that PAI purchased the Property in a foreclosure sale, *see* Compl. ¶¶ 16, 19, but the state court's August 25, 2014 Order expressly ruled that "[t]he foreclosure sale did not occur . . . PAI never acquired title by purchasing the property in a foreclosure sale." Aug. 25, 2014 Order at 12. Plaintiff was well aware of the state court's August 25, 2014 Order, as the Court discussed this same state court order when applying the *Rooker-Feldman* doctrine in *Kennedy I*. *See Kennedy I* Dismissal at 9. When filing the instant complaint, Plaintiff had no "arguable claim" that the *Rooker-Feldman* doctrine would not also apply to bar the Court's consideration of the instant complaint. *See Conn*, 967 F.2d at 1421.

The Court recognizes that "[w]hat is objectively reasonable for a *pro se* litigant and for an attorney may not be the same." *Rupert*, 2013 WL 5289617, at *4. However, it is inescapable that a reasonably competent litigant would not, in good faith, file a complaint based on the same facts and claims that the U.S. District Court for the Northern District of California has already rejected three times. *See Conn*, 967 F.2d at 1421. Plaintiff knew that this Court dismissed *Kennedy I*, a virtually identical complaint, just three days before the instant case was filed. As discussed above, Plaintiff made no changes to the complaint that would lead an objectively reasonable person to believe the instant complaint warranted a different result than *Kennedy I*.

Further, the Court recently dismissed substantially similar suits by Plaintiff's mother and Plaintiff's company PAI. Although the record does not reflect when PAI's ownership transferred to Plaintiff, Plaintiff is now the "sole member" of PAI, *see* Compl. ¶ 12, and likely was aware of PAI's lawsuit and the lawsuit's dismissal under the *Rooker-Feldman* doctrine. Moreover, Plaintiff shares Hettinga's phone and fax numbers, and *Kennedy I* listed Plaintiff's email as *wylmina@live.com*. *See* ECF No. 29-2 (Declaration of Dave M. McGraw). It strains credulity

1 that Plaintiff was not aware of Hettinga’s lawsuit or the lawsuit’s dismissal, also under the
 2 *Rooker-Feldman* doctrine. Plaintiff certainly would have been aware of the lawsuits—and the
 3 lack of legal foundation for the instant case—with a reasonably competent investigation. *See*
 4 *Conn*, 967 F.2d at 1421. Plaintiff’s complaint warrants sanctions because it is “clearly frivolous,”
 5 “legally unreasonable or without legal foundation,” and was brought without a reasonably
 6 competent inquiry into the claim’s merits. *See Operating Eng’rs Pension Trust v. A-C Co.*, 859
 7 F.2d 1336, 1344 (9th Cir. 1988).

8 Additionally, it appears that this complaint was brought for the improper purpose of
 9 harassing Defendants. *See G.C. & K.B. Invs., Inc.*, 326 F.3d at 1110 (“[W]ithout question,
 10 successive complaints based upon propositions of law previously rejected may constitute
 11 harassment under Rule 11.”). As discussed, Plaintiff brought successive complaints “based on
 12 propositions of law clearly rejected by the Court.” *See id.* Plaintiff filed the instant case just three
 13 days after the dismissal of *Kennedy I* and “failed to allege anything other than the same argument
 14 repeatedly rejected by this Court.” *See id.* Defendants have been forced to respond to virtually
 15 the same frivolous complaint four different times in five years. *See id.* (affirming grant of
 16 sanctions based on improper purpose when party filed four motions based on the same rejected
 17 argument). Moreover, the similarities of the complaints filed by Plaintiff and Hettinga, as well as
 18 Plaintiff’s and Hettinga’s shared contact information, suggest to the Court that Hettinga may be
 19 attempting to circumvent the three orders declaring her a vexatious litigant by filing suits through
 20 Plaintiff. *See Loumena II*, 2014 WL 4955187, at *4-5 (declaring Hettinga a vexatious litigant);
 21 Aug. 25, 2014 Order (noting Hettinga was declared a vexatious litigant in the California Superior
 22 Court and the California Court of Appeal). The Court concludes that Plaintiff’s successive
 23 baseless filings constitute harassment. *See id.* (affirming that successive motions were both
 24 frivolous and harassing when the motions relied upon law rejected by the court).

25 The Court desires to deter Plaintiff from repeated “baseless filings” and harassment of
 26 Defendants. *Townsend*, 929 F.2d at 1362. However, the Court recognizes that Plaintiff is *pro se*.

Accordingly, the Court GRANTS Title Co.'s Motion for Sanctions in the amount of \$300. Plaintiff must pay the penalty to Title Co. within thirty (30) days of the filing of this order. The Court cautions Plaintiff that filing another complaint based on these same facts and claims may result in greater sanctions.

2. Plaintiff's Request for Sanctions

Plaintiff requests \$102,000 in sanctions against Title Co.'s attorney because "Defendants previously fraudulently claimed that prior lawsuits brought by [PAI] were in fact lawsuits brought by Wylmina E Hettinga" and Defendants "fraudulently" switched ownership of PAI between Hettinga and Plaintiff. Opp.2 at 2-3. However, the local rules of this Court require that all motions for sanctions be separately filed. Civ. L.R. 7-8(a). Plaintiff's request for sanctions, included within Plaintiff's opposition to Title Co.'s Motion to Dismiss, does not comply with this requirement. *See Harr v. City of Mountain View*, No. 10-CV-02995, 2010 WL 4919478, at *4 (N.D. Cal. Nov. 12, 2010) (denying motion for sanctions because it was not separately filed).

Moreover, Plaintiff makes no substantive argument as to why the actions of Title Co.'s attorney warrant sanctions. To support Plaintiff's motion for sanctions, Plaintiff cites a memorandum of which the Court declined to take judicial notice. The memorandum is an unlabeled one-page excerpt of a longer document without any identifying information. However, even if the Court took notice of this memorandum, which includes one instance in which Title Co. referred to PAI as Hettinga's company, the memorandum does not demonstrate that Title Co. fraudulently misrepresented PAI's ownership to the Court. Nor does the memorandum demonstrate that Title Co. has in any way made a frivolous filing or filed a motion for an improper purpose. *See Fed. R. Civ. P. 11(b)*. There is simply no evidence in the record supporting a sanctions award against Title Co. Plaintiff's motion is frivolous. Accordingly, the Court DENIES Plaintiff's request for sanctions.

D. Motion to Declare Plaintiff a Vexatious Litigant

District courts have the inherent power under the All Writs Act to declare a party a

vexatious litigant and impose upon him appropriate pre-filing restrictions. *See Ringgold-Lockhart v. Cnty. of L.A.*, 761 F.3d 1057, 1061 (9th Cir. 2014) (citing 28 U.S.C. § 1651(a)). “Out of regard for the constitutional underpinnings of the right to court access, ‘pre-filing orders should rarely be filed.’” *Id.* at 1062 (quoting *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir. 1990)). “Nevertheless, ‘flagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.’” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (brackets omitted) (quoting *De Long*, 912 F.2d at 1148) .

“When district courts seek to impose pre-filing restrictions, they must: (1) give litigants notice and ‘an opportunity to oppose the order before it [is] entered’; (2) compile an adequate record for appellate review, including ‘a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed’; (3) make substantive findings of frivolousness or harassment; and (4) tailor the order narrowly so as ‘to closely fit the specific vice encountered.’” *Ringgold-Lockhart*, 761 F.3d at 1062 (alteration in original) (quoting *De Long*, 912 F.2d at 1147-48). “The first and second of these requirements are procedural, while the latter two factors are substantive considerations that help the district court define who is, in fact, a vexatious litigant and construct a remedy that will stop the litigant’s abusive behavior while not unduly infringing the litigant’s right to access the courts.” *Id.* (alterations omitted). The Court addresses each requirement in turn.

1. Adequate Notice

As to the first factor, “[t]he requirement that the plaintiff receive an opportunity to be heard does not require an oral hearing; ‘the opportunity to brief the issue fully satisfies due process requirements.’” *See Reddy v. MedQuist, Inc.*, No. CV 12-01324 PSG, 2012 WL 6020010, at *3 (N.D. Cal. Dec. 3, 2012) (quoting *Molski*, 500 F.3d at 1059). Here, Plaintiff filed written opposition to the motion to declare him a vexatious litigant. Opp.2. Accordingly, Plaintiff had adequate notice and opportunity to oppose this order. *See Molski*, 500 F.3d at 1058 (finding

adequate notice when the court's order was prompted by defendants' motion and served on plaintiff's counsel).

2. Record for Review

Under the second factor, the Court must compile an adequate record for review, including "a listing of all the cases and motions that led the district court to conclude that a vexatious order was needed." *De Long*, 912 F.2d at 1147. The Court has already detailed Plaintiff's prior lawsuits, as well as the lawsuits filed by Plaintiff's company PAI, Hettinga, and Plaintiff's brother. To complete the record, however, the Court will briefly summarize Plaintiff's litigation history.

Plaintiff has filed four lawsuits arising out of the Hettinga-Loumena divorce proceedings, including the instant case. *Hammon II*, No. 15-CV-03613-NC; *Nichols I*, No. 15-CV-01372-BLF; *Kennedy I*, No. 14-CV-04165-LHK. Plaintiff's first suit, *Kennedy I*, presented virtually identical allegations against the same defendants as the instant case. *See generally* Compl.; *Kennedy I* Compl. The instant case adds only some new allegations about Plaintiff's and PAI's ownership of the Property. *See generally* Compl.; *Kennedy I* Compl. *Kennedy I* and the instant case raise the same claim that the sale of the Property to a third party, the execution of the grant deed by Kennedy, and the distribution of the proceeds from the sale violate Plaintiff's Fourth, Fifth, and Fourteenth Amendment rights. *Kennedy I* Dismissal at 8. *Kennedy I*, like the instant case, was dismissed for lack of subject matter jurisdiction. *Id.* at 9. Moreover, Plaintiff filed the instant case three days after this Court dismissed *Kennedy I*.

Kennedy I, and the instant case, followed similar suits filed by Plaintiff's company PAI and Hettinga. In *Loumena II*, Hettinga sued Loumena and Kennedy and alleged that she or PAI owned the Property and that Kennedy granted the Property to Loumena in violation of Hettinga's Fourth, Fifth, and Fourteenth Amendment rights. *Loumena II*, No. 13-CV-02217-RMW. In *PAI*, PAI sued Hettinga, Loumena, Kennedy, Raley, and O'Connor while Hettinga filed a cross-complaint against PAI, Loumena, Kennedy, Raley, O'Connor, and Chicago Title Co. *PAI* Dismissal. The Court in *PAI* found that the "complaint and cross-complaint allege similar facts

and claims, all of which are nearly identical to the claim brought by Hettinga in an earlier case in this district against the same defendants,” referring to *Loumena II*. *Id.* at 2. Both *Loumena II* and *PAI* were dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine in 2014. As discussed in detail above, this Court examined this litigation history and concluded that the instant complaint was frivolous, harassing, and warrants sanctions. *See supra* Part III.C.1.

Plaintiff’s second suit in this district challenged a Superior Court Judge’s January 6, 2015 refusal to hear any more requests for declaratory relief from a state court order requiring Plaintiff to be in the care of Loumena and have limited contact with Hettinga. *Nichols I*, No. 15-CV-01372-BLF. Like *Kennedy I*, Plaintiff’s second suit was dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Further, like *Kennedy I*, Plaintiff’s second suit overlaps substantially with other lawsuits filed by Plaintiff’s family members. Plaintiff’s younger brother filed a virtually identical suit challenging the same Superior Court Judge’s January 6, 2015 refusal to hear more requests for declaratory relief from an order barring Plaintiff’s younger brother from Hettinga’s custody. *Nichols II*, 15-CV-02303-BLF. Additionally, Hettinga filed a lawsuit on behalf of herself, Plaintiff, Plaintiff’s younger brother, and Hettinga’s other minor children challenging the state court’s limitation of Hettinga’s visitation rights. *Hammon I*, No. 09-CV-06040-JW. Although Plaintiff’s brother’s suit remains pending, Hettinga’s suit was dismissed for lack of subject matter jurisdiction on December 28, 2009.

Plaintiff filed his third case arising out of the Hettinga-Loumena divorce proceedings on August 6, 2015. *Hammon II*, No. 15-CV-03613-NC. Plaintiff sued Hammon and Krepelka—both defendants in the instant case—over the distribution of Plaintiff’s money from the proceeds of the sale of the Property. *Id.*; ECF No. 45 (Plaintiff’s Motion to Relate). Plaintiff’s third case remains pending.

Thus, Plaintiff, Plaintiff’s company PAI, Hettinga, and Plaintiff’s brother have filed eight substantially overlapping lawsuits in this district. Plaintiff’s mother and brother have filed an additional four lawsuits arising out of the Hettinga-Loumena divorce proceedings. *See Paliwal*,

No. 15-CV-02246-BLF; *Barth*, No. 14-CV-05423-LHK; *Loumena I*, No. 10-CV-02975-JSW; *Orlando*, No. 09-CV-00253-JW. Of the twelve total cases in this district arising from the Hettinga-Loumena divorce proceedings, eight cases, now including this one, have faced a motion to dismiss. All eight have been dismissed for lack of subject matter jurisdiction. *See Nichols I*, No. 15-CV-01372-BLF (collecting cases). Two of the dismissed cases have been summarily affirmed by the Ninth Circuit. *PAI*, 14-CV-01631-RMW; *Orlando*, No. 09-CV-00253-JW; *see also Loumena II*, No. 13-CV-02217-RMW (appeal pending).

Additionally, Hettinga has been declared a vexatious litigant in this district and in the state Superior Court and the state Court of Appeal. *See Loumena II*, 2014 WL 4955187, at *4-5 (declaring Hettinga a vexatious litigant); Aug. 25, 2014 Order at 8. This record, the Court concludes, is adequate for review. *See Sephry-Fard v. Select Portfolio Servicing, Inc., et al.*, No. 14-CV-05142-LHK, 2015 WL 1063070, at *8 (N.D. Cal. Mar. 10, 2015) (finding the second factor met where the court discussed the relevant federal court suits and motions).

3. Substantive Finding

Under the third factor, a district court must make a substantive finding that the party's litigation has been either frivolous or harassing. *Ringgold-Lockhart*, 761 F.3d at 1064. "To determine whether the litigation is frivolous, district courts must look at both the number and content of the filings as indicia of the frivolousness of the litigant's claims." *Id.* There is no numerical baseline for frivolousness, but a district court must find that the litigant has filed an "inordinate" number of actions. *Id.* "Litigiousness alone," the Ninth Circuit has said, "is not enough." *Id.* As to the content of the filings, the party's claims must "be patently without merit." *Id.* Litigation is harassing, moreover, where "the litigant's filings show a pattern of harassment." *Id.* Courts should "be careful not to conclude that particular types of actions filed repetitiously are harassing, and must instead discern whether the filing of several similar types of actions constitutes an intent to harass the defendant or the court." *Id.* (alterations omitted).

In addition, the Ninth Circuit has identified five factors courts should consider in

determining whether a party's litigation qualifies as frivolous or harassing:

(1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Id. at 1062.

Having considered these five factors, as well as the standards detailed above, the Court concludes Plaintiff is a vexatious litigant. The first and second factors weigh heavily in favor of declaring Plaintiff vexatious. Again, Plaintiff has filed at least four lawsuits aimed at undermining state court orders on issues arising out of the Hettinga-Loumena divorce proceedings. Plaintiff has not prevailed in any. Further, Plaintiff's lawsuits are "duplicative." *Id.* Plaintiff filed the instant lawsuit three days after the dismissal of *Kennedy I*, which was virtually identical. Both *Kennedy I* and the instant lawsuit are duplicative of previous lawsuits filed by Plaintiff's company PAI and Hettinga. Plaintiff lacked "an objective good faith expectation of prevailing" in the instant case. *See id.*

Additionally, Plaintiff's second lawsuit challenging the state court visitation order is virtually identical to a lawsuit filed by Plaintiff's younger brother, and both of those lawsuits overlap with a lawsuit filed by Hettinga. *See id.* at 1064 (noting litigant may be declared vexatious when the filings "show a pattern of harassment").

None of the lawsuits filed by Plaintiff, Plaintiff's company PAI, Hettinga, or Plaintiff's brother have been successful on the merits. Rather, eight of the twelve lawsuits filed by these litigants, including the instant lawsuit, have been dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. *See Nichols I*, No. 15-CV-01372-BLF (collecting cases). These cases have been "patently without merit." *See Ringgold-Lockhart*, 761 F.3d at 1064. Thus, that Plaintiff has filed only four lawsuits as a named plaintiff does not undermine the Court's conclusion that Plaintiff is a vexatious litigant. *See Sepehry-Fard*, 2015 WL 1063070, at *9

1 (declaring plaintiff vexatious based on eleven lawsuits).

2 Further, the similarities of the complaints filed by Plaintiff and Hettinga suggest to the
3 Court that Hettinga may be attempting to circumvent the order of the U.S. District Court, the
4 California Superior Court, and the California Court of Appeal declaring Hettinga a vexatious
5 litigant by filing suits through Plaintiff. Plaintiff shares Hettinga's phone and fax numbers, and in
6 a previous case listed Plaintiff's email as "wylmina@live.com." *See* ECF No. 29-2 (Declaration
7 of Dave M. McGraw). This further bolsters the Court's conclusion that Plaintiff's litigation is
8 filed to harass Defendants.

9 The fourth factor also weighs in favor of declaring Plaintiff a vexatious litigant. As
10 discussed, Plaintiff's four suits have been duplicative of other lawsuits filed by Plaintiff's
11 company PAI, Hettinga, and Plaintiff's brother. The twelve cases of Plaintiff, Plaintiff's company
12 PAI, Hettinga, and Plaintiff's brother have raised similar claims against similar groups of
13 defendants. For example, Hammon has been a defendant in nine cases, including all four of
14 Plaintiff's cases. These lawsuits have required Defendants, and the Court, to duplicate effort to
15 address similar claims before six different judges in the Northern District of California. Plaintiff
16 "without question" has "caused unnecessary expense to [his] opposing parties and ha[s] posed an
17 unnecessary burden on the courts." *See Sepehry-Fard*, 2015 WL 1063070, at *10.

18 Plaintiff does not address these factors or defend his litigation history. Instead, Plaintiff
19 claims that "Defendants previously fraudulently claimed that prior lawsuits brought by [PAI] were
20 in fact lawsuits brought by Wylmina E Hettinga" and Defendants "fraudulently" switched
21 ownership of PAI between Hettinga and Plaintiff. Opp.2 at 2-3. As discussed above, Plaintiff
22 does not demonstrate that Defendants fraudulently misrepresented PAI's ownership to the Court.
23 Further, Plaintiff does not explain why the alleged improper behavior by Title Co. affects
24 *Plaintiff's* declaration as a vexatious litigant. Lastly, Plaintiff does not dispute that Hettinga and
25 PAI—and Plaintiff himself—have filed substantially similar lawsuits about the sale of the
26 Property.

The third and fifth factors do not counsel a different result. “[P]ro se litigants are not immune from a vexatious litigation finding.” *Sepehry-Fard*, 2015 WL 1063070, at *11. Notwithstanding Plaintiff’s status as a pro se litigant, the record amply shows that his litigation has been frivolous and harassing. Plaintiff’s suits are “preempt[ing] the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *Molski*, 500 F.3d at 1057. Furthermore, the Court does not believe that other sanctions would adequately protect the courts and prospective defendants. It appears to the Court that Hettinga may be attempting to avoid the orders of the U.S. District Court, the California Superior Court, and the California Court of Appeal declaring Hettinga a vexatious litigant by filing suits through her children. Given this potential disregard of the orders declaring Hettinga a vexatious litigant and the repeated duplicative filings by Plaintiff, the Court finds that other remedies would not be “adequate to protect the courts and other parties.” *See Ringgold-Lockhart*, 761 F.3d at 1062. The Court concludes that a narrowly tailored pre-filing order is the most appropriate remedy in this instance.

4. Narrowly Tailored Remedy

“Finally, pre-filing orders must be narrowly tailored to the vexatious litigant’s wrongful behavior.” *Ringgold-Lockhart*, 761 F.3d at 1066. A narrowly tailored order, thus, should restrain the “plaintiff from filing only the type of claims [he] had been filing vexatiously.” *Id.*; *see also Molski*, 500 F.3d at 1061.

Here, Plaintiff’s abusive behavior is the filing of duplicative lawsuits arising out of the sale of the Property at 21251 Almaden Road, San Jose, CA and the distribution of the proceeds. The Court therefore enjoins Plaintiff from filing any documents in this case or from filing any new action in the U.S. District Court for the Northern District of California arising out of facts related to sale of the Property at 21251 Almaden Road, San Jose, CA or to the distribution of the proceeds from the sale, without passing a pre-filing review. By requiring pre-filing review of Plaintiff’s future actions related to the sale of the Property and the distribution of the proceeds, the Court seeks to preclude Plaintiff from further harassing the individuals involved in the sale and to ensure

respect of the Court's order declaring Hettinga a vexatious litigant.

IV. CONCLUSION

For the foregoing reasons, the Court rules as follows:

- The Court GRANTS Defendants' motions to dismiss without prejudice;
- The Court GRANTS Title Co.'s Motion for Sanctions against Plaintiff in the amount of \$300, which Plaintiff must pay to Title Co. within thirty days of the filing of this order;
- The Court DENIES Plaintiff's Motion for Sanctions against Title Co.; and
- The Court DECLARES Plaintiff to be a vexatious litigant.

This order is not a bar to Plaintiff bringing lawsuits; it merely requires pre-filing review. Plaintiff does not currently file electronically. Plaintiff must file at the office of the Clerk of this Court. The Clerk may not file or accept any further documents in this case or any new complaints filed by or on behalf of Plaintiff as a named plaintiff that arise out of facts related to the sale of the Property at 21251 Almaden Road, San Jose, CA or to the distribution of the proceeds from the sale. If Plaintiff wishes to file a document in this case or a complaint arising out of facts related to the sale of the Property or to the distribution of the proceeds, Plaintiff shall provide a copy of any such document or complaint and a copy of this order to the Clerk of this Court. The Clerk shall then forward the document or complaint and a copy of this order to the Duty Judge for a determination whether the document or complaint should be accepted for filing. If the Duty Judge determines that the document or complaint is duplicative or frivolous, it will not be filed and will be returned to Plaintiff. If the document or complaint is neither duplicative nor frivolous, it will be given to the Clerk with instructions to file it. Any violation of this order will expose Plaintiff to a contempt hearing and appropriate sanctions, and any action filed in violation of this order will be subject to dismissal with prejudice.

The Clerk shall close the case file.

United States District Court
Northern District of California

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IT IS SO ORDERED.

Dated: October 13, 2015



LUCY H. KOH
United States District Judge